

REMARKS

This Amendment and Response are filed in reply to the Office Action dated August 18, 2003. In this Response, Applicants amend claims 1-19 to correct antecedent basis and form issues. Support for the amendments can be found throughout the originally filed disclosure. Cancellations of and/or amendments to the claims are not an acquiescence to any of the rejections. Furthermore, silence with regard to any of the Examiner's rejections is not an acquiescence to such rejections. Specifically, silence with regard to Examiner's rejection of a dependent claim, when such claim depends from an independent claim that Applicants consider allowable for reasons provided herein, is not an acquiescence to such rejection of the dependent claim(s), but rather a recognition by Applicants that such previously lodged rejection is moot based on Applicants' remarks and/or amendments relative to the independent claim (that Applicants consider allowable) from which the dependent claim(s) depends. Furthermore, any cancellations of and amendments to the claims are being made solely to expedite prosecution of the instant application. Applicants reserve the option to further prosecute the same or similar claims in the instant or a subsequent application. Upon entry of the Amendment, claims 1-19 are pending in the present application.

The issues of the August 18, 2003 Office Action are presented below with reference to the Office Action.

With regard to the Office Action, paragraphs 1-3: The Examiner rejected claims 1-19 under 35 U.S.C. 103(a) based on German Patent DT 2617364, Figures 1 and 2, and Craft et al. (U.S. 6,015,444). Applicants amend the claims as provided herein, and accordingly, traverse the Examiner's rejections of all pending claims.

Applicants amend independent claim 1 to include features of previously filed claims 2 and 7, such that independent claim 1 now includes a vent for a septic system, where the vent includes a leg to sealingly receive gas conveyed from a septic system conduit, and, *at least one filter in communication with the leg, the at least one filter to filter the gas conveyed from the septic system conduit, said at least one filter disposed in at least one aperture to release said filtered gas from said vent.*

In the present Office Action, Examiner did not reject Applicants' previously filed claim 7 (directed to the filter(s)) based on the German Patent, as such patent does not teach such filter.

Rather, Examiner relied on Craft et al. to reject such filter feature, now a feature of independent claim 1. Applicants respectfully disagree with Examiner's 35 U.S.C. 103(a) rejection of Applicants' filter(s) feature, as provided in Applicants' independent claim 1.

As Examiner knows, and based at least on MPEP 2143, a prima facie case of obviousness under 35 U.S.C. 103(a) requires (1) a suggestion or motivation in the references themselves or generally known in the art, to combine the references, (2) a reasonable expectation of success to combine, and (3) a teaching, via the combination, of all the claimed limitations. Applicants submit herein that the Examiner fails to provide a prima facie case of obviousness, as at least the two of the aforementioned elements fail to be satisfied in the present case.

As stated recently by the CAFC, *In Re Sang Su Lee* (January 18, 2002, 00-1158), quoting *In re Fritch*, 972 F.2d 1260, 1265, 23 USPQ2d 1780, 1783 (Fed. Cir. 1992), "the examiner can satisfy the burden of showing obviousness of the combination 'only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references.'" In the present Office Action, Examiner fails to provide such motivation for any of the rejections, stating merely that "it would have been obvious to one of ordinary skill in the art [to combine references]." (Office Action, pages 2 and 3). In such statements, the Examiner states an advantage of the Applicants' combination, without reference to any objective evidence of motivation as is required. Specifically, the German Patent is directed towards a vent for gas emissions, while Craft et al. teach venting a transmission with the purpose of reducing and/or eliminating *fluid expulsion* from the transmission. In contrast, Applicants' independent claim 1 is directed to *gas emission of a septic system*. One of ordinary skill in septic systems is not the same person of ordinary skill for transmissions. Accordingly, one of ordinary skill in septic systems or other ground emissions would not be persuaded or otherwise motivated to combine Craft et al.'s teachings regarding fluid expulsion reduction with the German patent for gas emissions, and thus the Examiner fails to show a prima facie case of obviousness under 35 U.S.C. 103(a).

Further, with respect to Craft et al., Applicants note that Craft et al. discuss the Craft et al. flow through the vents as follows:

"A first flow path begins at arrow 92 and proceeds through the central passage 60 of standpipe 18, through the at least one radially extending passage 64 of standpipe, through filter 90, out through the at least one aperture 80 and out of the

breather 12 *between the bowl 20 and the shroud 22*. A second flow path also begins at arrow 92 and extends through the interior of standpipe 18, through filter 90, *and back through the interior of the standpipe* before returning to the transmission 10 as indicated by arrow 94."

As provided in Applicants' independent claim 1, the vent includes *at least one filter in communication with the leg, the at least one filter to filter the gas conveyed from the septic system conduit, said at least one filter disposed in at least one aperture to release said filtered gas from said vent*. As indicated above from Craft et al., the filters of Craft et al. act merely to route the flow to another part of the transmission vent, and not to *release said filtered gas from said vent*, as claimed by Applicants' independent claim 1. Accordingly, Applicants consider that Examiner's proposed combination of Craft et al. and the German patent fails to satisfy the all-elements requirement to provide a prima facie case of obviousness. Such failure also indicates a failure of Examiner to address the reasonable expectation of success element.

Applicants' failure to address every element of the prima facie case of obviousness should not be construed as an acquiescence to such elements, but rather, a recognition by Applicants that such other elements are moot based on Examiner's failure to a prima facie showing of each and every element.

Applicants thus traverse the Examiner's 35 U.S.C. 103(a) rejection of independent claim 1, and Applicants consider independent claim 1 to be allowable. Claims 2-12 depend from allowable independent claim 1, and are thus also allowable.

Independent claim 13 is amended to include the allowable features previously discussed herein relative to allowable independent claim 1, and thus, independent claim 13 is also allowable for the same reasons, and also, dependent claims 14-19 which depend from allowable independent 13.

Applicants thus traverse all of Examiner's 35 U.S.C. 103(a) rejections of pending claims 1-13.

CONCLUSION

Applicants consider the Response herein to be fully responsive to the referenced Office Action. Based on the above Remarks, it is respectfully submitted that this application is in condition for allowance. Accordingly, allowance is requested. If there are any remaining issues or the Examiner believes that a telephone conversation with Applicants' attorney would be helpful in expediting the prosecution of this application, the Examiner is invited to call the undersigned at 617-832-1241.

Respectfully submitted,

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